

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11/8/14

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:
RICHARD SUSSMAN,

Plaintiff,

-against-

FEDERAL BUREAU OF PRISONS, ET AL.,

Defendants.
-----x

REPORT & RECOMMENDATION

13 Civ. 7014 (GBD) (MHD)

TO THE HONORABLE GEORGE B. DANIELS,
UNITED STATES DISTRICT JUDGE:

On October 2, 2013, pro se plaintiff Richard Sussman filed a complaint in this action. (Dkt. No. 2). On November 25, 2013, the District Court dismissed plaintiff's claims against the Metropolitan Correctional Center sua sponte, and issued an Order of Service directing the Clerk of Court to issue a summons and directing plaintiff to serve the summons and complaint on the Federal Bureau of Prisons through the U.S. Marshals Service within 120 days. (Dkt. No. 5). The Order further noted that if service was not made within 120 days and plaintiff had not requested an extension of time to serve, the complaint may be dismissed for failure to prosecute. (Id. at 2). On November 25, 2013 the case was referred to us for general pretrial supervision. (Dkt. No. 7).

Plaintiff has never served the defendants. Having already

granted plaintiff several extensions of the deadline to serve defendants (see Order filed Oct. 7, 2014) (recounting history of the case, granting a further four-week extension, and warning that further delay would trigger a recommendation of a Rule 4(m) and 41 dismissal), I am now in receipt of the attached letter, in which plaintiff asks for a dismissal without prejudice. I deem this document to be the equivalent of a Rule 41(a)(1)(A)(i) notice of dismissal, and I recommend that the case be dismissed without prejudice.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable George B. Daniels, Room 1310, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007-1312. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See Thomas v. Arn, 474 U.S. 140, 150 (1985), reh'g denied, 474 U.S. 1111 (1986); Small v. Sec'y of Health and Human Services, 892 F.2d 15, 16 (2d Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: New York, New York
November 7, 2014

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael H. Dolinger', written in a cursive style.

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

A copy of the foregoing Report and Recommendation has been sent today by mail to:

Mr. Richard Sussman, MD
1710 Avenue H, #F3
New York, NY 11230-1825